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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2142/2012*, **

Communication submitted by:	Zinaida Shumilina et al. (Ms. Shumilina submits the petition on her own behalf and acts as counsel for the other authors)
Alleged victims:	The authors
State party:	Belarus
Date of communication:	23 February 2012 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 27 March 2012 (not issued in document form)
Date of adoption of Views:	28 July 2017
Subject matter:	Authors refused permission to hold demonstrations by the executive authorities in their city
Procedural issue:	Distinct examination of a claim under article 2 (2)
Substantive issues:	Freedom of expression; freedom of assembly; effective remedy
Articles of the Covenant:	19 and 21, read in conjunction with 2
Article of the Optional Protocol:	3

1. The authors of the communication are Zinaida Shumilina, born in 1952; Vladimir Katsura, born in 1957; Vasily Polyakov, born in 1969; Anatoly Poplavny, born in 1958; Yuri Zaphartenko, born in 1959; Edward Nelubovich, born in 1962; Leonid Sudalenko, born in 1966; Andrey Tolchin, born in 1959; Yuri Klimovich, born in 1964; Vladimir Nepomnyashchikh, born in 1952; Vladimir Myshak, born in 1933; and Marina Smyaglikova, born in 1962, all nationals of Belarus. They claim to be victims of violations

* Adopted by the Committee at its 120th session (3-28 July 2017).

** The following members of the Committee participated in the examination of the present communication: Tania Maria Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

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by Belarus of their rights under articles 19 and 21, read in conjunction with 2, of the Covenant. Ms. Shumilina submits the petition on her own behalf and acts as counsel for the other authors. The Optional Protocol entered into force for Belarus on 30 December 1992.

The facts as submitted by the authors

2.1 On 4 February 2011, the authors filed an application with the Executive Committee of Gomel to hold, in different locations around the town, a series of demonstrations (so-called pickets) on 23 February, with the purpose of expressing their opinion regarding the political persecution of former presidential candidates and their supporters. The application was reviewed by the Executive Committee which, on 17 February, issued a decision prohibiting the demonstrations.

2.2 On 14 March 2011, the authors filed an appeal against the decision of the Executive Committee with the Central District Court, which rejected the appeal on 12 May. On an unspecified date, the authors filed a cassation appeal against the District Court's decision with the Regional Court of Gomel. On 5 July, the Regional Court issued a ruling confirming the decision of the first instance court and rejecting the authors' appeal.

2.3 In addition, on unspecified dates, the authors attempted to file requests for supervisory review of the decisions of the lower courts with the President of the Gomel Regional Court and the President of the Supreme Court of Belarus. Both rejected their appeals, on 25 November 2011 and 12 January 2012 respectively, and affirmed that the decision of the first instance court was lawful. The authors submit that they did not attempt to apply to the Office of the Public Prosecutor for a supervisory review, as they consider that such review is not an effective remedy, and make reference to the jurisprudence of the Committee in that regard. They also note that Belarus legislation does allow individual citizens the possibility of complaining directly to the Constitutional Court for alleged violations of their constitutional rights.

The complaint

3.1 The authors contend that they have exhausted all available and effective domestic remedies.

3.2 The authors claim to be victims of violations by Belarus of their rights under articles 19 and 21, read in conjunction with 2 (2) and (3), of the Covenant.

3.3 The authors submit that they were refused permission to conduct their campaign on the grounds that they had not fulfilled the requirements of the decision of the Executive Committee of Gomel No. 299 of 2 April 2008 on mass action in the City of Gomel, issued on the basis of the domestic Public Events Act, which delegates to the local authorities the competence to determine locations where public events can take place and which contains vague and unclear wording. The decision requires organizers of public events to hold them in a specific location in the city designated for that purpose by the authorities and, prior to the event, to conclude remunerated contracts with the respective services for maintenance of public order and provision of medical services during the event, and for cleaning of the location after the event. Permission to hold the event was refused because the authors had planned to organize pickets in a location other than the one designated for that purpose and because they had failed to conclude the required contracts. The authors submit that they do not understand the purposes of the limitation of their right to participate in peaceful demonstrations and the freedom to express their opinions, to which they are entitled under articles 19 and 21 of the Covenant. In the absence of any clarification of those purposes, the authors believe that the limitations of their rights were not necessary for the protection of national security, public order or public health or morals, or respect for the rights or reputations of others. They further submit that the requirements imposed by the domestic legislation are arbitrary and not justified under articles 19 and 21 of the Covenant.

3.4 The authors refer to article 33 of the law on international treaties, which states that the international treaties to which Belarus is a party and that have entered into force are part of the domestic legislation. They claim that Belarus has failed to undertake the necessary measures to give effect to the rights recognized in articles 19 and 21 of the Covenant. The authors refer to the Committee's Views in communication No. 628/1995, *Tae Hoon Park v.*

Republic of Korea,[1] in which the Committee found it incompatible with the Covenant that the State party had given priority to the application of its national law over its obligations under the Covenant. The authors maintain that Belarus has given precedence to its internal legislation over the Covenant by leaving the selection of mandatory places for the conduct of public gatherings to municipal officials and by requiring organizers to obtain prior permission without justifying why that was necessary, as required by articles 19 and 21 of the Covenant, and has thus violated those articles, read in conjunction with article 2.

3.5 The authors also note that Belarus did not issue the notification, required by article 4 (3) of the Covenant, that it has derogated from certain rights owing to the existence of a public emergency, and the reasons for such derogation.

Lack of cooperation by the State party

4. On 27 March 2012, the Committee requested the State party to provide any information with regard to the admissibility or the merits of the authors' claims by 27 September. Despite reminders sent by the secretariat on 24 January and 19 November 2014 and 16 February 2015, the State party failed to provide any observations.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the claim is admissible under the Optional Protocol.

5.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 The Committee takes note of the authors' claim that they have exhausted all effective domestic remedies available to them. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

5.4 The Committee notes the authors' submission that the State party has violated its obligations under article 2 (2) of the Covenant as it failed to adopt such laws or other measures as may be necessary to give effect to the rights recognized in articles 19 and 21. The Committee recalls its jurisprudence, which indicates that the provisions of article 2 set forth a general obligation for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.[2] The Committee also considers that the provisions of article 2 (2) cannot be invoked as the basis for a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 (2) is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim.[3] The Committee notes, however, that the authors allege a violation of their rights under articles 19 and 21, read alone, resulting from the interpretation and application of the existing laws of the State party, and the Committee does not consider that examination of whether the State party also violated its general obligations under article 2 (2), read in conjunction with articles 19 and 21, to be distinct under article 3 of the Optional Protocol.

5.5 In the absence of any information provided by the State party on the facts of the case, the Committee declares all other aspects of the communication admissible as far as it raises issues under articles 19 and 21, read alone and in conjunction with 2 (3), of the Covenant, and proceeds with its examination of the merits.

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[1] Views adopted on 20 October 1998, para. 10.4.

[2] See, for example, communications No. 2202/2012, *Castañeda v. Mexico*, Views adopted on 18 July 2013, para. 6.8; No. 1834/2008, *A.P. v. Ukraine*, decision of inadmissibility adopted on 23 July 2012, para. 8.5; No. 1887/2009, *Peirano Basso v. Uruguay*, Views adopted on 19 October 2010, para. 9.4.

[3] Communication No. 2030/2011, *Poliakov v. Belarus*, Views adopted on 17 July 2014, para. 7.4.

Consideration of the merits

6.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol. It notes that, despite the reminders sent to it, the State party has not provided any replies on either the admissibility or the merits of the communication. The Committee notes that, under article 4 (2) of the Optional Protocol, a State party is under an obligation to cooperate with the Committee by submitting to it written explanations or statements clarifying the matter and indicating the measures, if any, that may have been taken to remedy the situation. As the State party has failed to cooperate in that regard, the Committee had no choice but to give the authors' allegations their full weight insofar as they have been substantiated.[4]

6.2 The Committee notes the authors' claims that the Executive Committee decision of 17 February 2011 unduly restricts their right to freedom of expression and their right of peaceful assembly by requiring organizers to hold public events in only one specified location in the city and, prior to the event, to conclude remunerated contracts with the services for maintenance of public order and provision of medical services during the event, and for cleaning of the location after the event.

6.3 The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it states that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person and that such freedoms are essential for any society (para. 2); that they constitute the foundation stone for every free and democratic society (para. 22); and that article 19 (3) of the Covenant allows certain restrictions only as provided by law and necessary (a) for the respect of the rights and reputation of others; and (b) for the protection of national security or public order (*ordre public*) or public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.[5] The Committee also recalls that it is for the State party to demonstrate that the restrictions on the authors' rights under article 19 of the Covenant were necessary and proportionate.[6]

6.4 In this context, the Committee recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for the public expression of an individual's views and opinions and indispensable in a democratic society. This right entails the possibility of organizing and participating in a peaceful assembly, including a stationary assembly (such as a picket) in a public location. The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience and no restriction to this right is permissible unless it is (a) imposed in conformity with the law; and (b) necessary in a democratic society, in the interests of national security or public safety, public order (*ordre public*), protection of public health or morals or protection of the rights and freedoms of others. When a State party imposes restrictions with the aim of reconciling an individual's right to assembly and the aforementioned interests of general concern, it should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it. The State party is thus under the obligation to justify the limitation of the right protected by article 21 of the Covenant.[7]

6.5 In the present case, the Committee must consider whether the restrictions imposed on the authors' right to freedom of expression and freedom of assembly are justified under any of the criteria set out in paragraph 3 of article 19 and the second sentence of article 21

[4] See for example, communications No. 964/2001, *Saidova v. Tajikistan*, Views adopted on 8 July 2004, para. 6.1; No. 1117/2002, *Khomidova v. Tajikistan*, Views adopted on 29 July 2004, para. 4; and No. 760/1997, *J.G.A. Diergaardt et al. v. Namibia*, Views adopted on 25 July 2000, para. 10.2.

[5] General comment No. 34, para. 22.

[6] See, for example, communications No. 1830/2008, *Pivonas v. Belarus*, Views adopted on 29 October 2012, para. 9.3; No. 1785/2008, *Olechkevitch v. Belarus*, Views adopted on 18 March 2013, para. 8.5; and No. 2092/2011, *Androsenko v. Belarus*, Views adopted on 30 March 2016, para.7.3.

[7] See communication No. 2019/2010, *Poplavny* v. *Belarus*, Views adopted on 5 November 2015, para. 8.4.

of the Covenant. The authors chose several different locations in Gomel for their pickets to publicly express their opinion regarding the political persecution of former presidential candidates and their supporters. The Committee notes that the national authorities rejected the authors' requests on the grounds that the events were planned to take place at locations other than the only location permitted for such activities under decision No. 299 and because the authors had failed to conclude contracts with city services providers. The Committee notes, in the light of the information available on file, that the municipal authorities have not provided any justification or explanation as to how, in practice, the authors' picket would violate the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others, as set out in articles 19 and 21 of the Covenant. It notes in particular that neither the decision of the Executive Committee to refuse the authors' requests to hold pickets nor the court decisions provide any justification as to why the restrictions imposed in decision No. 299 and applied in the authors' case were necessary and justified.

6.6 The Committee notes that it has dealt with similar cases in respect of the same laws and practices of the State party in a number of earlier communications.[8] In line with these precedents, the Committee concludes that, in the present case, the State party has violated the authors' rights under articles 19 and 21 of the Covenant.

6.7 The Committee also notes that the prohibition imposed by decision No. 299 of an assembly in any public location in the entire city of Gomel with the exception of a single remote area unduly limits freedom of expression and the right of assembly in the same context. In these circumstances, the Committee finds that the formal application of decision No. 299 and the rejection by the State party's authorities of the authors' requests to hold pickets to be unjustified, and concludes that the authors' rights under articles 19 and 21 of the Covenant have been violated.

6.8 In the light of this conclusion, the Committee decides not to examine the authors' claims of a separate violation of article 2 (3), read in conjunction with articles 19 and 21, of the Covenant.

7. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the authors' rights under articles 19 and 21 of the Covenant.

8. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to reimburse any expenses incurred by the authors and to provide them with adequate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future. In this connection, the Committee reiterates that the State party should revise its legislation, in particular decision No. 299 of the Gomel City Executive Committee and the Public Events Act of 30 December 1997 as it has been applied in the present case, in accordance with its obligation under article 2 (2), with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.[9]

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has

[8] Ibid., para. 8.5. See also, for example, communications No. 1949/2010, *Kozlov et al. v. Belarus*, Views adopted on 25 March 2015, paras. 7.5-7.6; No. 1999/2010, *Evrezov et al. v. Belarus*, Views adopted on 10 October 2014, paras. 8.6-8.8; No. 1976/2010, *Kuznetsov et al. v. Belarus*, Views adopted on 24 July 2014, paras. 9.6 and 9.8; No. 1851/2008, *Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 9.7; No. 1808/2008, *Kovalenko v. Belarus*, Views adopted on 17 July 2013, paras. 8.3-8.8; and No. 1948/2010, *Turchenyak et al. v. Belarus*, Views adopted on 24 July 2013, paras. 7.3-7.8.

[9] See, for example, *Poplavny v. Belarus*, para. 10; *Sekerko v. Belarus*, para. 11; *Turchenyak et al. v. Belarus*, para. 9; and communications No. 1992/2010, *Sudalenko v. Belarus*, Views adopted on 27 March 2015, para. 10; and No. 1790/2008, *Govsha et al. v. Belarus*, Views adopted on 27 July 2012, para. 11.

undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in Belarusian and Russian in the State party.